

DRUG-RELATED LEGISLATION

AND ITS IMPORTANCE TO LAW ENFORCEMENT

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The 2012 General Assembly (through the Regular and Extraordinary sessions) has passed three major statutes that apply to controlled substances, legend drugs and over-the-counter medications.

House Bill 481, which is emergency legislation, was signed into law and effective as of April 11, 2012. This bill repeals existing statutes that apply to substituted cathinones, also known as bath salts, and synthetic cannabinoids, also known as K2/Spice. It then reenacts and expands prohibitions against possession and trafficking and redefines the collection of substances known as bath salts and synthetic marijuana as “synthetic drugs.” Due to the everchanging makeup of these substances, the prior definition did not cover a number of the formulations being seen by the Kentucky crime lab, making prosecution difficult, if not impossible.

In addition, the statutes provide for the Cabinet for Health and Family Services to schedule new substances that are substantially similar to the prohibited substances as such through an expedited process, to allow the law to adapt to newly developed formulations.

Of additional importance to law enforcement agencies is that the law now permits the use or sale of such items as a factor in a potential revocation of alcoholic beverages licenses and allows some forfeitures as well. Trafficking in synthetic drugs is a class A misdemeanor for the first offense, and elevates to a class D felony for subsequent offenses. Possession is a class B misdemeanor. The Court has the option in trafficking cases to impose a fine that is double the monetary gain to the defendant for the sale, and such fines shall be divided in the same manner as provided for forfeitures under KRS 218A.420.

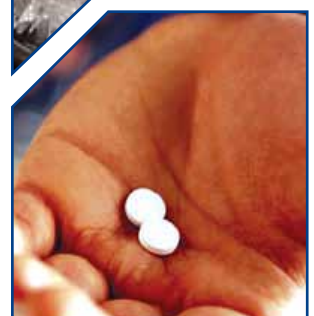
PSEUDOEPHEDRINE

Senate Bill 3, which is regular legislation and effective as of July 12, 2012, applies to pseudoephedrine. The statute will permit electronic, rather than written logs, to be kept. It reduces the permissible limits for pseudoephedrine purchases to 7.2 grams a month, or 24 grams a year, unless sold pursuant to a prescription. It prohibits the purchases of pseudoephedrine by individuals convicted of methamphetamine or anhydrous ammonia offenses within the previous five years. Penalties under this provision remain essentially unchanged.

PILL MILLS

House Bill 1, passed during the 2012 Extraordinary Session, becomes effective July 20, 2012. This bill creates new laws relating to the ownership of clinics devoted to pain management and which prescribe pain medications (such as hydrocodone). It also creates a reporting requirement, providing that law enforcement agencies (among other listed entities) that receive a report of improper or illegal prescribing of controlled substances may share such information within three days to other agencies listed in the statute.

It further requires that state licensing boards for individuals permitted to prescribe such substances create appropriate administrative regulations to regulate the prescribing of such substances, the investigation of improper prescribing allegations and the expedited review of such allegations. New legislation provides detailed requirements for doctors who prescribe such substances, particularly those that contain hydrocodone, such as Vicodin and Lortab. Further, it makes changes to the Kentucky All Schedule Prescription Electronic Reporting system that, among other provisions, allows for expanded access to the data to prosecutors and employees of medical professional's offices. (When included in the patient's medical file, it becomes protected under HIPAA.) It mandates that the Cabinet for Health and Family Services use the data collected by the system to proactively study prescribing and usage patterns for such substances. Related changes require that the coroners' offices do toxicology testing in an expanded number of death investigations and share data with the Kentucky State Police and Vital Statistics. Finally, the bill creates a Prescription Monitoring Program Compact, an interstate compact to develop the ability to securely share prescription data to participating states. Penalties for violations of sections of the bill vary, as many will be classified under subsequently enacted administrative provisions with the potential for a loss of one's license. But for example, the illegal operation of a pain management facility is a class A misdemeanor. Certain provisions related to failure to transmit data as required have been dropped one level — from class A to class B misdemeanors for first offenses and from class D felonies to class A misdemeanors for subsequent offenses. 🐾



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